

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COINLAB, INC., a Delaware Corporation,
Plaintiff,
v.
MT. GOX KK, a Japanese corporation, and
TIBANNE KK, a Japanese corporation,
Defendants.

No. 2:13-cv-00777-MJP

ANSWER AND COUNTERCLAIM

PREFATORY STATEMENT

In the following Answer and Counterclaims, Defendants MtGox KK ("MtGox") and Tibanne KK ("Tibanne") are answering the Complaint filed by CoinLab, Inc. ("CoinLab") and asserting Counterclaims against CoinLab. As set forth in more detail below, the claims asserted by CoinLab in its Complaint are without merit and should be dismissed by the Court. These claims arise out of the November 22, 2012 Exclusive License Agreement for the USA and Canada ("the Agreement") between the parties and that Agreement expressly provided that by March 22, 2013 CoinLab was to be compliant with all federal and state statutes, rules and regulations which govern the Bitcoin exchange services that CoinLab was to provide under the Agreement. To perform the Bitcoin exchange services in the United States called

1 for under the Agreement, CoinLab was required to be registered and licensed with the federal
2 government and most of the states as a money transmitter. The Agreement is void and
3 unenforceable, and is subject to rescission, because CoinLab failed and refused to become so
4 registered and licensed, and, the Agreement, if performed by CoinLab, would have been
5 unlawful -- if MtGox had continued to perform under the Agreement and transferred customer
6 accounts to CoinLab, such that CoinLab was engaging in Bitcoin exchange services in the
7 US, CoinLab would have been acting in violation of federal and state law, to the prejudice of
8 the MtGox customers. MtGox has rescinded the Agreement.

In their Counterclaims MtGox and Tibanne are requesting that the Court, among other things, adjudge and declare that the Agreement is void *ab initio* and unenforceable in light of CoinLab's failure to be properly registered and licensed; and, in light of the rescission of it, to order CoinLab to return to MtGox all benefits that CoinLab received under the Agreement, including the amounts of USD \$62,258.70, CAD \$ 40.00 and 1428.81263537 Bitcoins.

In addition, and separate and apart from the Agreement, CoinLab has wrongfully converted the amount of \$5,315,210.79 in MtGox customer deposits. MtGox is asking the Court to impose a constructive trust over such amounts, to order an accounting, and to enter judgment against CoinLab for all damages suffered by MtGox as a result of such conversion.

ANSWER

19 Defendants MtGox KK (“MtGox”) and Tibanne KK (“Tibanne”) (collectively
20 “Defendants”), by and through their undersigned attorneys, hereby answer the Complaint.
21 The allegations in the following paragraphs 1-57 are directed to the corresponding paragraphs
22 1-57 of the Complaint, respectively.

23 1. As to the first sentence of this paragraph, Defendants lack knowledge or
24 information sufficient to form a belief about the truth of the allegations and on such basis
25 deny them; and, further allege that Defendants have not breached the exclusive license
26 agreement referred to in the first sentence. As to the second sentence, Defendants admit that

1 MtGox is among the world's largest providers of Bitcoin exchange services; as to the
2 remaining allegations in this sentence, Defendants lack knowledge or information sufficient to
3 form a belief about the truth of said allegations and on such basis deny them. As to the third
4 sentence of this paragraph, Defendants admit that in November 2012 CoinLab and Defendants
5 entered into the Exclusive License Agreement for the USA and Canada ("the Agreement")
6 and that a copy of it is attached as Exhibit A to the Complaint; that the terms of the
7 Agreement are set forth in the Agreement itself; and, except as so admitted, deny the
8 allegations of this sentence. As to the fourth sentence of this paragraph, Defendants admit
9 that under the Agreement CoinLab was "...to manage and market the exchange services in
10 North America..."; except as so expressly admitted Defendants deny the allegations of this
11 sentence.

12 2. As to the first and third sentences of this paragraph Defendants admit that,
13 because of CoinLab's failure to comply with the state and federal laws and regulations that
14 apply to the Bitcoin exchange services that CoinLab was to provide under the Agreement,
15 MtGox ceased performing under the Agreement, and providing CoinLab with account
16 reconciliation data, server access, and other information called for under the Agreement
17 because Defendants' performance was excused by such breaches by CoinLab; and, except as
18 so admitted and alleged, Defendants deny the allegations of these sentences. As to the second
19 sentence, Defendants admit that persons in North America have continued to use the website
20 at www.mtgox.com to effectuate the purchase and sale of Bitcoin; and, except as so admitted
21 Defendants lack knowledge or information sufficient to form a belief about the truth of the
22 allegations in said sentence and on such basis deny them. Defendants allege that they lack
23 knowledge or information sufficient to form a belief about the truth of the allegations and on
24 such basis deny them. Defendants deny the allegations of the fourth sentence of this
25 paragraph. As to the fifth sentence, Defendants lack knowledge or information sufficient to
26 form a belief about the truth of said allegations and on such basis deny them.

1 3. Defendants admit the allegations of the first, second and third sentences of this
 2 paragraph. As to the fourth sentence, Defendants admit that CoinLab is alleging damages in
 3 excess of \$75 million; Defendants deny that CoinLab has been damaged in such amount or
 4 any amount at all, as a result of the acts of Defendants; and, further deny that CoinLab is
 5 entitled to any recovery or remedy in this action.

6 4. Defendants lack knowledge or information sufficient to form a belief about the
 7 truth of the allegations of this paragraph and on such basis deny them.

8 5. Admitted.

9 6. Defendants admit that in November 2012 they and CoinLab entered into the
 10 Agreement and that a true and accurate copy of the Agreement is attached as Exhibit A to the
 11 Complaint. Except as so expressly admitted, Defendants deny the allegations of this
 12 paragraph.

13 7. Defendants admit that section 10.E. of the Agreement provided in pertinent
 14 part, as follows—"The parties hereby irrevocably consent to the personal jurisdiction of and
 15 venue in the state and federal courts located in King County, Washington with respect to any
 16 action, claim or proceeding arising out of or relating to this Agreement." Except as expressly
 17 admitted, Defendants deny these allegations of this paragraph.

18 8. Admitted.

19 9. As to the first sentence of this paragraph, Defendants admit that Bitcoin were
 20 first mined in 2009, since that time over 11 million Bitcoin that have been mined, and since
 21 2009 the acceptance and use of Bitcoin has increased substantially; the term "most
 22 successful" is vague and subjective and, therefore, except as so admitted, Defendants lack
 23 knowledge or information sufficient to form a belief about the truth of the allegations in said
 24 sentence. As to the second sentence, Defendants admit that Bitcoin were first described in a
 25 paper on the Internet in 2008 and that the first Bitcoin were mined in 2009; except as so
 26 admitted Defendants lack knowledge or information sufficient to form a belief about the truth

1 of the allegations in said sentence and on such basis deny them. As to the third and fourth
 2 sentences of this paragraph, Defendants admit that Bitcoin are not issued by any government,
 3 that Bitcoin are created and mined through a peer-to-peer network over the Internet, that
 4 cryptography is used in an attempt to protect the security of the Bitcoin system and in an
 5 attempt to prevent counterfeiting; and, except as so admitted Defendants lack knowledge or
 6 information sufficient to form a belief about the truth of the allegations in said sentences and
 7 on such basis deny them.

8 10. As to the first sentence of this paragraph, Defendants lack knowledge or
 9 information sufficient to form a belief about the truth of the allegations and on such basis
 10 deny them. Defendants admit the allegations in the second, third and fourth sentence of this
 11 paragraph.

12 11. As to the first sentence of this paragraph, Defendants admit that Bitcoin
 13 exchange services can involve a customer purchasing Bitcoin with “fiat” or “sovereign”
 14 currency, or a customer selling Bitcoin for “fiat” or “sovereign” currency. Except as so
 15 expressly admitted Defendants lack knowledge or information sufficient to form a belief
 16 about the truth of the allegations and on such basis deny them. As to the second sentence,
 17 Defendants admit that the annualized volume of Bitcoin transactions conducted over
 18 exchanges can be estimated by reviewing certain resources, and, making estimates of market
 19 rates is also possible with certain resources, but Defendants have not done such estimates “as
 20 of April 2013”; and, except as so admitted Defendants lack knowledge or information
 21 sufficient to form a belief about the truth of the allegations in said sentences and on such basis
 22 deny them.

23 12. Defendants admit that Bitcoins are not a traditional fiat based currency; and,
 24 that persons and entities that are involved in certain types of Bitcoin services and transactions
 25 in the United States are subject to regulation by the United States Financial Crimes
 26 Enforcement Network (“FinCEN”), subject to limits on the jurisdiction of FinCEN. Except as

1 so expressly admitted, Defendants lack knowledge or information sufficient to form a belief
2 about the truth of the allegations in said sentences and on such basis deny them.

3 13. Admitted.

4 14. As to the first and second sentences of this paragraph, Defendants admit that
5 MtGox provides Bitcoin exchange services via the internet and that MtGox operates an
6 interactive website available at <https://mtgox.com/>; Defendants deny that Defendant Tibanne
7 engages in such activities. As to the third sentence of this paragraph, Defendants admit that
8 once a customer opens an account with MtGox, provides certain customer information
9 requested by MtGox, and deposits currency into such account, such customer can use the
10 website (referred to in this paragraph as “the MtGox website”) to purchase Bitcoin from other
11 MtGox customers; except as so expressly admitted Defendants deny the allegations of this
12 sentence. As to the fourth sentence, Defendants admit that MtGox has been reported to be the
13 largest operating Bitcoin exchange in the world; and, except as so admitted Defendants lack
14 knowledge or information sufficient to form a belief about the truth of the allegations in said
15 sentence and on such basis deny them.

16 15. As to the first sentence, Defendants allege they lack knowledge or information
17 sufficient to form a belief about the truth of the allegations and on such basis deny them.
18 Defendants deny the second sentence of this paragraph. As to the third and fourth sentences
19 of this paragraph, Defendants deny that CoinLab adhered “...to applicable regulatory
20 frameworks...”; as to the remaining allegations Defendants allege they lack knowledge or
21 information sufficient to form a belief about the truth of the allegations and on such basis
22 deny them.

23 16. Defendants deny that CoinLab was properly registered with FinCEN as of the
24 time relevant under the Agreement; as to the other allegations in this paragraph Defendants
25 allege they lack knowledge or information sufficient to form a belief about the truth of the
26 allegation and on such basis deny them.

1 17. Defendants admit that in November 2012 CoinLab and Defendants entered
2 into the Agreement and that Exhibit A to the Complaint is a true and accurate copy of the
3 Agreement. Except as so expressly admitted, Defendants deny the allegations of this
4 paragraph.

5 18. Defendants admit that MtGox currently has no established banking
6 relationships in North America. Except as so expressly admitted, Defendants deny the
7 allegations of this paragraph.

8 19. Denied.

9 20. Defendants admit that under section 1.B. and C. of the Agreement CoinLab
10 was granted "...an exclusive, non-transferable royalty-free license to the Licensed Materials
11 for use to provide the Services within the United States of America and Canada (collectively
12 the "Territory"), effective during the Term (as defined herein below) and on the terms and
13 conditions set forth in this Agreement. ..."; and further allege that the term "Licensed
14 Materials" is defined in section 1.B. of the Agreement. Except as so expressly admitted and
15 alleged Defendants deny the allegations in this paragraph.

16 21. Defendants admit that section 1.F.1 of the Agreement provides as follows:

17 "During the Term, MtGox and Tibanne shall not grant anyone
18 the right to use the Licensed Materials to provide the Services,
19 or any part thereof, in the Territory. The exclusivity granted
20 herein shall apply strictly to Services targeting the Territory and
21 the CoinLab Customers (as defined below) and advertised and
sold as such. It shall not include the provision of Services to
users of the Services who, depending on the interpretation or
circumstances, may or may not be considered CoinLab
Customers."

22 Except as expressly admitted Defendants deny the allegations of this paragraph.

23 22. Defendants admit that the Agreement set forth those responsibilities imposed
24 on CoinLab with respect to managing and marketing the Services in the Territory, and that
25 under the Agreement CoinLab was to "assume responsibility for managing and marketing"
26

1 the Bitcoin exchange services in the United States and Canada.' Except as so expressly
 2 admitted Defendants deny the allegations in this paragraph.

3 23. Defendants admit that the Agreement provided that a breach of section 1.F.1
 4 "...shall be considered a material breach of this Agreement." Except as so expressly admitted
 5 Defendant deny the allegations in this paragraph.

6 24. Defendants deny the allegations in this paragraph, including denying that they
 7 have "breached the exclusivity provisions of the Agreement", including section 1.F.1; and,
 8 further denying that any interaction between MtGox and MtGox customers in the United
 9 States and Canada after the effective date of the Agreement constitutes a breach of any
 10 provision of the Agreement.

11 25. Denied.

12 26. As to the first sentence of this paragraph, Defendants admit that since the
 13 parties entered into the Agreement in November 2012, users located in the United States and
 14 Canada have used the www.mtgox.com website to effectuate purchases and/or sales of
 15 Bitcoin; Defendants deny that such conduct constitutes a breach of any provision of the
 16 Agreement; and, except as so admitted and denied, Defendants lack knowledge or information
 17 sufficient to form a belief about the truth to the allegations of such sentence and on such basis
 18 deny them. Defendants deny the second sentence of this paragraph.

19 27. Defendants admit that: the Agreement provided that the term CoinLab
 20 Customers "...mean all current and future users of the Services who are citizens of either the
 21 United States of America or Canada or that can be identified as such from identification
 22 documents provided to MtGox or CoinLab."; the Agreement provides for a Transition Period
 23 that is to expire on March 22, 2013; and, the Agreement provides that MtGox and CoinLab
 24 were to cooperate in transferring the Liquidity Funds as defined in section 3.C. of the
 25 Agreement by the expiration of such Transition Period. Except as so expressly admitted
 26 Defendant deny the allegations of this paragraph.

1 28. Defendants admit that: by March 22, 2013 MtGox had not deposited all
 2 Bitcoins and other funds of the MtGox customers that were the subject of the Agreement into
 3 an account or accounts controlled by CoinLab; MtGox did not do so because CoinLab was not
 4 compliant with those laws applicable to the Services that CoinLab was to provide under the
 5 Agreement; and, that any alleged “duty” on the part of MtGox to so deposit or transfer the
 6 Bitcoins and funds of the “CoinLab Customers” is void *ab initio* and not enforceable and/or
 7 was legally excused. Except as so expressly admitted Defendants deny the allegations of this
 8 paragraph.

9 29. Defendants admit that section 2 of the Agreement set forth the operational
 10 responsibilities of MtGox under the Agreement. Except as so expressly admitted Defendants
 11 lack knowledge or information sufficient to form a belief about the truth to the allegations of
 12 such paragraph and on such basis deny them.

13 30. Defendants admit that Defendants ceased performing under the Agreement
 14 because CoinLab failed and refused to comply with the laws and regulations applicable to the
 15 Bitcoin exchange services it was to provide under the Agreement by the March 22, 2013
 16 expiration of the Transition Period; and, that in light of CoinLab’s failure the duties of
 17 Defendants under the Agreement are void *ab initio* and unenforceable and/or legally excused.
 18 Except as so expressly admitted, Defendants deny the allegations of this paragraph.

19 31. Defendants admit that section 2.E. of the Agreement provided as follows:
 20 “Before completion of the Transition Period, MtGox shall
 21 deliver all passwords, Yubikeys, administrative logins and any
 22 other security information required so that CoinLab may
 23 assume operation of the services under the terms of this
 24 Agreement.”
 25
 26 Except as so expressly admitted Defendants deny the allegations of this paragraph.

27 32. Defendants admit that: by March 22, 2013 MtGox had not delivered all
 28 passwords, Yubikeys, administrative logins and other security information so that CoinLab
 29

1 could assume operation of the Services for the MtGox customers that were to be transferred to
 2 CoinLab under the Agreements; MtGox did not make such deliveries because CoinLab was
 3 not compliant with those laws applicable to the Services that CoinLab was to provide under
 4 the Agreement; and, that any alleged duty on the part of MtGox in this regard is void *ab initio*
 5 and not enforceable and/or was legally excused. Except as so expressly admitted Defendants
 6 deny the allegations of this paragraph.

7 33. Defendants admit that section 2.G. of the Agreement set forth the duties of
 8 MtGox with respect to access to MtGox databases and other related records and data
 9 pertaining to any and all customer accounts to have been managed by CoinLab under the
 10 Agreement. Except as so expressly admitted Defendants deny the allegations of this
 11 paragraph.

12 34. Defendants admit that MtGox had stopped allowing access to CoinLab of
 13 MtGox's databases and other related records and data pertaining to the MtGox customers that
 14 were to be transferred to CoinLab under the Agreements; MtGox did so because CoinLab had
 15 failed to provide evidence that such customers had agreed to CoinLab's Terms of Service;
 16 and, CoinLab was not compliant with those laws applicable to the Services that CoinLab was
 17 to provide under the Agreement; and, that any alleged duty on the part of MtGox in this
 18 regard is void *ab initio* and not enforceable and/or was legally excused. Except as so
 19 expressly admitted Defendants deny the allegations of this paragraph.

20 35. Defendants admit that section 3.A., of the Agreement defined the term
 21 "CoinLab Customers" but deny that the allegations of this paragraph accurately characterize
 22 such provisions; Defendants admit that section 4.A. of the Agreement provided for the
 23 splitting of revenue that is "...derived from fees, commissions or other payment [sic] charged
 24 to CoinLab Customers in relation to the Services during the Term (a "**Revenue**"), ..." but
 25 deny that the allegations of this paragraph accurately characterize such provisions. Except as
 26 so expressly admitted Defendants deny the allegations of this paragraph.

1 36. Defendants admit that: MtGox stopped engaging in the splitting or sharing of
 2 Revenue as called for under the Agreement; MtGox did so because CoinLab was not
 3 compliant with those laws applicable to the Services that CoinLab was to provide under the
 4 Agreement; and, that any alleged duty on the part of MtGox in this regard is void *ab initio* and
 5 not enforceable and/or was legally excused. Except as so expressly admitted Defendants deny
 6 the allegations of this paragraph.

7 37. Defendants admit that: under the agreement the term “CoinLab Customers”
 8 meant “...all current and future users of the Services who are citizens of either the United
 9 States of America or Canada or that can be identified as such from identification documents
 10 provided to Mt. Gox or CoinLab.”; the Agreement provided for a Transition Period that is to
 11 expire on March 22, 2013; and, under the Agreement MtGox and CoinLab were to cooperate
 12 in transferring the Liquidity Funds as defined in section 3.C. of the Agreement by the
 13 expiration of the Transition Period. Except as so expressly admitted Defendant deny the
 14 allegations of this paragraph.

15 38. Defendants admit that: MtGox stopped depositing Bitcoins and other funds of
 16 the MtGox customers that were to be transferred to CoinLab under the Agreement into an
 17 account or accounts controlled by CoinLab; MtGox did so because CoinLab was not
 18 compliant with those laws applicable to the Services that CoinLab was to provide under the
 19 Agreement; and, that any alleged duty on the part of MtGox to so deposit or transfer the
 20 Bitcoin and funds is void *ab initio* and not enforceable and/or was legally excused. Except as
 21 so expressly admitted Defendants deny the allegations of this paragraph.

22 39. Defendants admit that section 4.B. of the Agreement set forth the parties’
 23 duties with respect to reconciling revenue and customer trade imbalances; and, deny that the
 24 allegations in paragraph 39 accurately set forth the duties reflected in section 4.D. Except as
 25 so expressly admitted Defendants deny the allegations of this paragraph.

26 40. Defendants admit that MtGox stopped engaging in the process called for under

1 the Agreement for the reconciling revenue and customer trade imbalances; MtGox did so
2 because CoinLab was not compliant with those laws applicable to the Services that CoinLab
3 was to provide under the Agreement; and, that any alleged duty on the part of MtGox in this
4 regard is void *ab initio* and not enforceable and/or was legally excused. Except as so
5 expressly admitted Defendants deny the allegations of this paragraph.

6 41. Defendants admit that section 5.E. of the Agreement set forth the duties of the
7 parties with respect to post-termination receipt of trailing revenues. Except as so expressly
8 admitted Defendants deny the allegations of this paragraph and further deny that it accurately
9 sets forth the provisions of section 5.E.

10 42. Denied.

11 43. Denied.

12 44. Denied.

13 45. Denied.

14 46. Defendants reallege and reincorporate their responses to paragraphs 1-45
15 above as if fully set forth herein.

16 47. Denied.

17 48. Defendants deny that they breached the Agreement in any manner, including
18 the manner set forth in paragraph 48, subparagraphs B [sic] through I. Defendants further
19 allege that any alleged duties to perform any of the acts referred to paragraph 48 are void *ab*
20 *initio* and not enforceable and any alleged failure to perform them was excused because of
21 CoinLab's prior breaches and/or failures to perform and/or failure of consideration.

22 49. Defendants deny the allegations of this paragraph and further deny that
23 CoinLab has suffered actual damages or any damages in any amount, or at all.

24 50. Defendants reallege and reincorporate their responses to paragraphs 1-49,
25 above, as if fully set forth herein.

26 51. Defendants lack knowledge or information sufficient to form a belief about the

1 truth of the allegations and on such basis deny them.

2 52. Defendants deny that they breached the Agreement in any manner, including
 3 the manner set forth in paragraph 52, subparagraphs A through H. Defendants further allege
 4 that any alleged duties to perform any of the acts referred to paragraph 52 are void *ab initio*
 5 and not enforceable and any alleged failure to perform them was excused because of
 6 CoinLab's prior breaches and/or failures to perform and/or failure of consideration.

7 53. Defendants deny the allegations of this paragraph and further deny that
 8 CoinLab has suffered actual damages or any damages in any amount, or at all.

9 54. Defendants reallege and reincorporate their responses to paragraphs 1-53,
 10 above, as if fully set forth herein.

11 55. Denied.

12 56. Defendants admit that in February 2013 counsel for CoinLab notified MtGox
 13 that CoinLab was going to exercise its audit rights under the Agreement; however, CoinLab
 14 did not pursue such audit and Defendants are informed and believe that CoinLab did not so
 15 proceed because Defendants provided the information then being requested by CoinLab.
 16 Except as so expressly admitted, Defendants lack knowledge or information sufficient to form
 17 a belief about the truth of the allegations and on such basis deny them.

18 57. Defendants deny the allegations in this paragraph. Defendants further allege
 19 that the duties called for under the Agreement and which are referred to in this paragraph are
 20 void *ab initio* and unenforceable and any alleged breaches of such duties were excused
 21 because of CoinLab's prior breaches and/or failures to perform and/or failure of
 22 consideration.

23 58. Responding to the allegations at page 11, lines 10-20 of the Complaint,
 24 Defendants deny that: CoinLab is entitled to any judgment in its favor; CoinLab has been
 25 damaged in any amount, or at all; or, that CoinLab is entitled to any relief from this Court.

1 **AFFIRMATIVE DEFENSES**

2 By way of further answer and for their affirmative defenses Defendants allege as
3 follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim)**

6 59. As a first affirmative defense to the Complaint and to each cause of action,
7 Defendants allege that Plaintiff has failed to state a claim upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Illegality)**

10 60. As a second affirmative defense to the Complaint and to each cause of action,
11 Defendants allege that because CoinLab was not, and is not, registered or licensed under
12 applicable money services business and/or money transmitter business (“MTB”) statutes the
13 Agreement is illegal, void *ab initio* and unenforceable; and, as set forth in the attached
14 Counterclaim has been rescinded.

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Failure of Consideration)**

17 61. As a third affirmative defense to the Complaint and to each cause of action,
18 Defendants allege that because CoinLab was not, and is not, registered or licensed under
19 applicable money services business and/or MTB statutes there is a failure of consideration and
20 the Agreement; and, as set forth in the attached Counterclaim, has been rescinded.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Material Breach)**

23 62. As a fourth affirmative defense to the Complaint and to each cause of action,
24 Defendants allege that because CoinLab was not, and is not, registered or licensed under
25 applicable money services business and/or MTB statutes there has been a material breach and
26 the Agreement; and, as set forth in the attached Counterclaim has been rescinded.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Fraud)**

3 63. As a fifth affirmative defense to the Complaint and to each cause of action,
4 Defendants allege that CoinLab made an express promise that it would "...operate the
5 Services in the Territory in compliance with all applicable laws...", which laws included the
6 MTB laws and regulations of the states in which MtGox had customers and that when it made
7 such promise CoinLab had no intent to be so compliant; and, as set forth in the attached
8 Counterclaim the Agreement has been rescinded.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Mistake)**

11 64. As a sixth affirmative defense to the Complaint and to each cause of action,
12 Defendants allege that Defendants were induced to enter into the Agreement by virtue of
13 mistake.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 **(Excuse of Performance)**

16 65. As a seventh affirmative, and alternative, defense to the Complaint and to each
17 cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
18 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
19 unenforceable and/or rescinded, Defendants allege that any performance on their part alleged
20 to be due by virtue the Agreement is excused by virtue of CoinLab's breaches and/or failure
21 of consideration of the Agreement.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Failure to Perform Obligations)**

24 66. As an eighth affirmative, and alternative, defense to the Complaint and to each
25 cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
26 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,

1 unenforceable and/or rescinded Defendants allege that any alleged failure of Defendants to
 2 perform their obligations resulted from CoinLab's failure to perform its obligations, and the
 3 performance on CoinLab's part of its obligations was a condition precedent to, or a condition
 4 concurrent with, the performance of Defendants' obligations.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Impossibility)**

7 67. As a ninth affirmative, and alternative, defense to the Complaint and to each
 8 cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
 9 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
 10 unenforceable and/or rescinded Defendants allege that the performance on Defendants' part
 11 was excused and/or extinguished because of impossibility.

12 **TENTH AFFIRMATIVE DEFENSE**

13 **(Termination)**

14 68. As a tenth affirmative, and alternative, defense to the Complaint and to each
 15 cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
 16 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
 17 unenforceable and/or rescinded Defendants allege that the Agreement has been terminated
 18 and any performance on Defendants' part is excused and/or extinguished.

19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 **(Estoppel)**

21 69. As an eleventh affirmative, and alternative, defense to the Complaint and to
 22 each cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
 23 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
 24 unenforceable and/or rescinded, Defendants allege that CoinLab's claims are barred by the
 25 doctrine of estoppel. Among other things, CoinLab represented, promised and warranted to
 26 be compliant with all laws and regulations applicable to the Bitcoin exchange services it was

1 to provide under the Agreement; Defendants relied on such representations, promises and
2 warranties in entering into the Agreement and would not have entered into the Agreement had
3 they known that CoinLab was not so compliant and would not be so compliant. In addition,
4 CoinLab represented, promised and agreed to perform other acts which Defendants relied
5 upon and CoinLab is estopped to claim one or more of the alleged breaches because of
6 CoinLab's failure to perform them As a result of these facts and others, CoinLab is estopped
7 to assert the claims alleged in the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

(Waiver)

10 70. As an twelfth affirmative, and alternative, defense to the Complaint and to
11 each cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
12 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
13 unenforceable and/or rescinded, Defendants allege that CoinLab’s claims are barred by the
14 doctrine of waiver. Among other things, by promising, representing and warranting to be
15 compliant with all laws and regulations applicable to the Bitcoin exchange services it was to
16 provide under the Agreement. And, in section 9 of the Agreement CoinLab expressly waived
17 the claims for damages it is asserting in this case.

THIRTEENTH AFFIRMATIVE DEFENSE

(Liquidated Damages Clause Void and Unenforceable)

20 71. As a thirteenth affirmative, and alternative, defense to the Complaint and to
21 each cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
22 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
23 unenforceable and/or rescinded, Defendants allege that liquidated damages provisions of
24 section 1.K., of the Agreement are void and unenforceable.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Damages Barred by Section 9 of the Agreement)**

3 72. As a fourteenth affirmative, and alternative, defense to the Complaint and to
4 each cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
5 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
6 unenforceable and/or rescinded, Defendants allege that CoinLab's claim for damages are
7 barred by section 9 of the Agreement which prohibits CoinLab from seeking "indirect,
8 incidental or consequential damages in connection with this Agreement, including, without
9 limitation damages relating to the loss of profits, income or goodwill, even if aware of the
10 possibility of such damages."

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 73. As a fifteenth affirmative, and alternative, defense to the Complaint and to
14 each cause of action, and without waiving that the Agreement is void *ab initio*, unenforceable
15 and/or rescinded, if the Court determines that the Agreement is not void *ab initio*,
16 unenforceable and/or rescinded, Defendants allege that Plaintiff's claims are barred by the
17 doctrines of unclean hands and/or inequitable conduct.

COUNTERCLAIM

Defendants MtGox KK (“MtGox”) and Tibanne KK (“Tibanne”) (collectively “Defendants”), for their Counterclaims against Plaintiff CoinLab, Inc. (“CoinLab”), allege as follows:

I. INTRODUCTION

1. Bitcoin was first created, or “mined”, in 2009. Initially, the numbers of Bitcoins and Bitcoin owners were small and its uses were limited. Since 2009, over 11 million Bitcoins have been mined and Bitcoin has experienced significantly increased acceptance and use in several countries as an alternate to “fiat” or traditional currencies, including the United States. Along with such growth and increased usage Bitcoins, Bitcoin services and transactions, and the persons and entities involved in such services and transactions, have been subjected to regulation in the United States, both by the federal government and most states. In this regard federal and state regulators have held that the regulatory requirements that apply to money services businesses and money transmission businesses (“MTBs”) apply to persons and entities engaged in various types of Bitcoin transactions and services.

2. In November 2012 the parties to this action, that is, CoinLab, MtGox and Tibanne, entered into an agreement called the “Exclusive License Agreement for the USA and Canada” (“the Agreement”), a copy of which is attached as Exhibit A to the Complaint. Under the Agreement CoinLab was to provide certain Bitcoin exchange services in the United States and Canada to MtGox customers who were U.S. or Canadian citizens. One of the express conditions of that Agreement was that by the March 22, 2013 expiration of the “Transition Period” under the Agreement, CoinLab was to be compliant with all laws and regulations applicable to the Bitcoin exchange services that it was to provide under the Agreement; such compliance would have required, among other things, that CoinLab be registered as a MTB under federal law and licensed as an MTB in each of the states that it

1 would be conducting Bitcoin exchange services. As of March 22, 2013 CoinLab was not so
 2 registered or licensed and CoinLab is still not licensed in almost every state in which it would
 3 have been providing Bitcoin exchange services under the Agreement. As a result, MtGox and
 4 Tibanne have rescinded the Agreement.

5 3. Defendants are bringing these Counterclaims for declarations, judgments and
 6 orders as follows:

7 a. That the Court adjudge, decree, declare and order that the Agreement is
 8 void *ab initio* and unenforceable. Under such Agreement CoinLab agreed and promised it
 9 would be compliant with all laws applicable to the Bitcoin exchange services that it was to
 10 provide under the Agreement yet CoinLab was not, and is not, compliant with the money
 11 transmitter and/or money services business laws of most, if not all, of the states in which it
 12 would be performing such services. As a result, it would be unlawful for CoinLab to perform
 13 such services and the Agreement is void *ab initio* and unenforceable. And, alternatively and
 14 without prejudice to the above,

15 b. That the Court enter judgment that the Agreement has been rescinded
 16 and that CoinLab be ordered to provide restitution to Defendants of all benefits that CoinLab
 17 received under the Agreement, including, but not limited to the amount of USD \$62,258.70
 18 and CAD \$40.00 that was paid to CoinLab under section 4 of the Agreement; and, the amount
 19 of 1428.81263537 Bitcoins also paid to CoinLab under section 4 of the Agreement. And,
 20 alternatively and without prejudice to the above,

21 c. That the Court adjudge, decree, declare and order that the “liquidated
 22 damages” provisions of section 1.K., of the Agreement are void and unenforceable. And,
 23 alternatively, and without prejudice to the above,

24 d. Separate and apart from the Agreement, that the Court impose a
 25 constructive trust, order an accounting and enter judgment against CoinLab for damages, and
 26 all other appropriate relief, for CoinLab’s misrepresentation, conversion and wrongful

1 retention of MtGox customer funds in the amount of \$ 5,315,210.79, plus interest.
 2 Defendants are informed and believe that in March and April, 2013 MtGox customers, at the
 3 suggestion of CoinLab, deposited \$12,788,701.08 into one or more CoinLab bank accounts;
 4 CoinLab then caused the amount of such funds to be credited to such customers' MtGox
 5 accounts but CoinLab did not transfer the actual funds into the MtGox bank account. As a
 6 result, such customers' MtGox account reflected a higher amount of currency funds available
 7 to such customers than were actually in the MtGox bank account. In April, 2013, and upon
 8 the demand of MtGox, CoinLab transferred a portion of those amounts, \$ 7,473,490.29, to the
 9 MtGox bank account, leaving a balance of approximately \$ 5,315,210.79 to be transferred to
 10 the MtGox account and which is being wrongfully held by CoinLab.

II. JURISDICTION AND VENUE

12 4. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 and 2201. On
 13 information and belief, CoinLab is a resident of Delaware and Washington State. Defendants
 14 MtGox and Tibanne are residents of Japan. CoinLab has alleged damages under the
 15 Agreement in excess of \$75,000,000.00 excluding interest, attorneys' fees and costs. In these
 16 Counterclaims, MtGox and Tibanne are seeking restitution of amounts that have a dollar
 17 value in excess of \$200,000, a constructive trust over sums in excess of \$5 Million, and
 18 damages according to proof. And, Defendants are seeking declaratory relief as alleged herein.

19 5. On information and belief, CoinLab is a Delaware corporation with its
 20 principal place of business in King County Washington.

21 6. MtGox and Tibanne are corporations organized under the laws of Japan with
 22 their principal places of business in Tokyo, Japan.

23 7. Section 10.E. of the Agreement provides, in pertinent part, that "[t]he parties
 24 hereby irrevocably consent to the personal jurisdiction of and venue in the state and federal
 25 courts located in King County, Washington with respect to any action, claim or proceeding
 26 arising out of or relating to this Agreement."

III. FACTUAL BACKGROUND

A. The Parties.

8. MtGox is a Japanese corporation headquartered in Shibuya ward, Tokyo, Japan. MtGox hosts and operates the website at <http://www.mtgox.com> ("the mtgox.com website"). Such website allows persons to open an account and to effectuate the purchase or sale of Bitcoin with other MtGox customers. Such MtGox customers are located in numerous countries around the world.

9. Tibanne is a Japanese corporation headquartered in Shibuya ward, Tokyo, Japan. Tibanne is the parent corporation of MtGox.

10. On information and belief, as of November 22, 2012 CoinLab was engaged in the business of Bitcoin business incubation as well as offering Bitcoin mining services for companies. On information and belief CoinLab is currently engaged in the business of “incubating” Bitcoin companies. At all relevant times Peter Vessenes (“Vessenes”) has been CEO of CoinLab.

11. Upon information and belief, CoinLab is a founding member of the Bitcoin Foundation. Upon information and belief, the Bitcoin Foundation was formed in 2012 and its members consist of persons and entities that all work in companies using or promoting Bitcoins. According to its website at <https://bitcoinfoundation.org/>, the purpose of the Bitcoin Foundation is to promote Bitcoins and the wider acceptance of Bitcoins. Since its founding, and up to at least May, 2013 Vesseenes has been chairman of the Bitcoin Foundation.

B. Bitcoin Exchange Business At Issue in this Action.

12. Bitcoin was first created, or “mined”, in 2009. Since 2009, when the first Bitcoin was mined, over 11 million Bitcoins have been mined and Bitcoin has experienced significantly increased acceptance and use in several countries as an alternate to “fiat” or traditional currencies, including the United States.

13. On information and belief, the website that became mtgox.com website was

1 created by an individual named Jed McCaleb in approximately 2007 as a cards online
 2 exchange for the game “Magic: The Gathering.” At that time it was not an online Bitcoin
 3 exchange. In approximately 2010 it changed into the Bitcoin online exchange which is now
 4 the mtgox.com website. In March 2011 Tibanne purchased the mtgox.com website and in
 5 August 9, 2011 MtGox was formed as a separate corporation and subsidiary of Tibanne; at
 6 that point MtGox commenced hosting and operating the mtgox.com website.

7 14. The mtgox.com website allows persons who have a MtGox account to
 8 purchase and sell Bitcoins for “fiat” currency with other MtGox account holders. To engage
 9 in such exchange transactions through the website a person must first open an account at
 10 MtGox to become a MtGox customer; then he/she must undergo an anti-money laundering
 11 (“AML”) verification process and then can deposit Bitcoin or currency in such account. At
 12 that point the customer can effectuate a Bitcoin purchase transaction. Currency funds
 13 deposited by MtGox customers, or credited to such customers as a result of selling Bitcoin,
 14 are maintained in a bank account opened and maintained by MtGox. The main bank account
 15 is in Japan. Bitcoin credited to such customers in their MtGox account are stored by MtGox
 16 in a series of bitcoin “wallets” held by MtGox. Customers can withdraw such currency funds
 17 and Bitcoin by communicating such instructions through the mtgox.com website.

18 15. The United States and approximately 47 states have statutes and/or regulations
 19 which regulate the “money services business.” One of the types of “money services business”
 20 regulated by such federal and state statutes and regulations is the “money transmission
 21 business” or “MTB.” Persons or entities which are engaged in the MTB are often referred to
 22 as “money transmitters.” At the federal level, the “money services business,” including MTB,
 23 is regulated by the Department of the Treasury, primarily through an agency called the
 24 Financial Crimes Enforcement Network (“FinCEN”). Such money services businesses are
 25 regulated under the federal Bank Secrecy Act (“BSA”), 31 U.S.C. sec. 5330, *et seq.*, and
 26 regulations promulgated pursuant to such Act. The purposes of such statute and regulations

1 include the detection of money laundering.

2 16. In addition, approximately 47 states have enacted statutes and/or regulations
 3 regulating “money transmitters,” and the MTB. Such statutes are referred to herein as “MTB
 4 statutes” or “money transmitter statutes.” The purposes of such statutes include the detection
 5 of money laundering and the protection of consumers.

6 17. In order to obtain licenses in each of the approximately 47 states referred to
 7 above, an applicant is required to pay a variety of fees upon application; and, in most such
 8 states is required to provide monetary security. If one were to apply for licenses in all 47 such
 9 states the amount of fees and monetary security required to be paid by the applicant would be
 10 substantial; and the applicant could also incur legal or professional fees.

11 18. Under 18 U.S.C. § 1960 it is unlawful to conduct an “unlicensed money
 12 transmitting business”; and, an “unlicensed money transmitting business” includes a money
 13 transmitting business which affects interstate or foreign commerce and is operated without a
 14 state money transmitting license or which fails to comply with 31 U.S.C. § 5330 or the
 15 regulations promulgated under that statute.

16 19. Federal and state regulators have held that the regulatory requirements that
 17 apply to money services businesses and MTBs apply to persons and entities engaged in
 18 various types of Bitcoin transactions and services. For example, in 2013, several steps were
 19 taken at the federal and state level which demonstrate that various types of services and
 20 transactions relating to Bitcoin, and persons and entities which provide such services and
 21 transactions in the United States, are subject to the federal and state laws and regulations that
 22 govern money services businesses and MTBs. In this regard, and among other things:

23 a. On March 18, 2013 FinCEN issued an interpretive guidance (“the
 24 FinCEN March 2013 Guidance”) to clarify the applicability of regulations implementing the
 25 BSA to “persons creating, obtaining, distributing, exchanging, accepting or transmitting
 26 virtual currencies”. A true and correct copy of the FinCEN March 2013 Guidance is attached

1 hereto as **EXHIBIT 1**. In such guidance, FinCEN stated, among other things, the following:

2 The definition of a money transmitter does not differentiate
 3 between real currencies and convertible virtual currencies.
 4 Accepting and transmitting anything of value that substitutes for
 currency makes a person a money transmitter under the
 regulations implementing the BSA.

5 b. On May 30, 2013 the California Department of Financial Institutions
 6 issued a warning letter to the Bitcoin Foundation, which is a trade organization of the Bitcoin
 7 industry, stating that "...the Bitcoin Foundation may be engaged in the business of money
 8 transmission without having obtained a license or proper authorization required by the
 9 California Financial Code...". A true and correct copy of such warning letter is attached
 10 hereto as **EXHIBIT 2**.

11 c. Defendants are informed and believe that in August 2013 the New
 12 York Department of Financial Services had subpoenas issued on approximately 24 companies
 13 involved in the Bitcoin industry and has expressed concern that such companies were not
 14 complying with New York's money transmission laws. CoinLab was one of the companies to
 15 which such a subpoena was directed.

16 **C. Negotiations Leading Up to the Agreement and the Relevant Terms of the
 17 Agreement.**

18 20. In approximately May 2012 MtGox and CoinLab commenced negotiations
 which led up to the Agreement.

19 21. One of the major issues, if not the major issue, that MtGox was concerned
 20 about was legal compliance on the part of CoinLab to conduct the Bitcoin exchange services
 21 in the United States that were being discussed by the parties during the negotiations. Early in
 22 the negotiations, that is, in approximately May and June 2012 discussions took place among
 23 CoinLab and MtGox representatives, including meetings in Japan and over "Skype" video
 24 conferencing. In one or more of those early discussions Vessenes made statements to the
 25 effect that CoinLab was compliant with all laws and regulations relevant to conducting the
 26

1 Bitcoin exchange business that was the subject of the parties' negotiations; and, that CoinLab
 2 was registered as a "prepaid access" provider and such was sufficient. Vessenes refused to
 3 disclose or why this was the case even though requested by MtGox, claiming it to be a "trade
 4 secret"; and, that if it were disclosed MtGox would have no need for CoinLab. Based on such
 5 assurances, MtGox continued negotiations with CoinLab and ultimately entered into the
 6 Agreement.

7 22. The Agreement had an effective date of November 22, 2012.

8 23. Under the Agreement MtGox and Tibanne granted CoinLab an exclusive
 9 license to use the "Licensed Materials" to provide, in the Territory (that is, the United States
 10 and Canada), the "digital currency exchange service operated by Mt. Gox..." on the
 11 mtgox.com website. The "Licensed Materials" were defined to mean "...all software,
 12 processes, know-how, copyrights, patents, trademarks, trade dress, trade secrets, agreements,
 13 policies and any and all other intellectual property that constitutes or is used in providing..."
 14 the Bitcoin exchange services operated by MtGox on the website.

15 24. Section 3., B., of the Agreement provided for a Transition Period which was
 16 defined as the 120 day period starting on the November 22, 2012 effective date of the
 17 Agreement. That 120 day period expired on March 22, 2013.

18 25. Under Section 2.A., of the Agreement, following the Transition Period
 19 CoinLab was to assume the "...responsibility for managing and marketing..." the Bitcoin
 20 exchange services in the "Territory" (the United States and Canada) in accordance with the
 21 terms of service (the "TOS") approved in advance and in writing by MtGox. In this regard,
 22 upon the expiration of the Transition Period, CoinLab was to offer the Bitcoin exchange
 23 services in the United States and Canada through a CoinLab website. That is, persons in the
 24 United States and Canada that wanted to purchase or sell Bitcoin through the MtGox
 25 exchange would do so through accounts opened at, or transferred to, CoinLab; they would
 26 effectuate such transactions by accessing a CoinLab website; and, their currency funds would

1 be held at one or more bank accounts controlled by CoinLab.

2 26. In this regard, Sections 3.B. and 3.C., of the Agreement provided that by the
 3 end of the Transition Period MtGox was to transfer and deposit all Bitcoin and other funds of
 4 its customers who were citizens of the United States and Canada to one or more "accounts
 5 controlled by CoinLab."

6 27. Persons in numerous countries had accounts at MtGox and used the exchange
 7 services of the mtgox.com website. Such persons, including the United States and Canadian
 8 customers who were to use the Bitcoin exchange services of CoinLab, were charged fees or
 9 commissions based upon the size of the transaction. Section 4.A., of the Agreement provided
 10 for an allocation of such fees and commissions as between MtGox and CoinLab with respect
 11 to the United States and Canada customers governed by the Agreement. Had the Agreement
 12 been fully implemented, Bitcoin purchases and sales could have been between and among
 13 customers in the United States covered by the Agreement and MtGox customers in other
 14 countries who were not covered by it. As a result, the Agreement in Section 4.D., provided
 15 for a reconciliation process by which "Revenue" (that is, the commissions and fees earned
 16 from a transaction) and customer funds would be reconciled between MtGox on the one hand,
 17 and CoinLab on the other, with respect to transactions covered by the Agreement. Section
 18 4.D., provided that such reconciliations would take place "...on a weekly basis on an as
 19 mutually agreed upon basis...". The revenue sharing provisions of Section 4 of the
 20 Agreement did not refer to the Transition Period; and, after the November 22, 2012 effective
 21 date CoinLab took the position that such revenue sharing and reconciliations were in effect as
 22 of the November 22, 2012 effective date, not the March 22, 2013 expiration of the Transition
 23 Period. As a result, for a period of time after November 22, 2012 the parties engaged in
 24 periodic reconciliations, and, as a result, MtGox made a net transfer to CoinLab of USD
 25 \$62,258.70, CAD \$ 40.00 and 1428.81263537 Bitcoins.

26 28. The Agreement expressly referred to CoinLab's duty to be compliant with all

1 laws applicable to the Bitcoin exchange services it was to provide under the Agreement.

2 a. Section 2.D. provided that CoinLab would operate the Bitcoin
3 exchange services in the Territory “...in compliance with all applicable laws after completion
4 of the Transition Period...”, that is, by March 22, 2013.

5 b. In section 6.A. (iv) CoinLab warranted that it would “...continue
6 throughout the Term to comply with all statutes, code, ordinances, laws, regulations, rules,
7 orders, and decrees of all governmental authorities... having jurisdiction...” over it.

8 29. Section 1.F.1 of the Agreement provided that during the term of the
9 Agreement, “...MtGox and Tibanne shall not grant anyone the right to use the Licensed
10 Materials to provide the Services, or any part thereof, in the Territory...”. Section 1.K., of the
11 Agreement further provided that if Defendants breached section 1.F.1 such would be a
12 material breach and would give rise to liquidated damages of \$50 million.

13 **D. The Parties’ Attempts to Implement the Agreement**

14 30. During the period starting in late November or early December, 2012 and
15 continuing into March 2013 the parties were taking steps to implement the Agreement,
16 including making a public announcement of the launch of the CoinLab services, exchanging
17 certain customer information, and exchanging certain technical information. In addition,
18 CoinLab stated that it was running operational and technical tests.

19 31. As of March 18, 2013, MtGox and Tibanne were prepared to complete
20 implementation of the Agreement. On that date, FinCEN issued the FinCEN March 2013
21 Guidance.

22 32. On or about March 20, 2013 MtGox sent an email to CoinLab which set forth a
23 list of the states which had MtGox customers and the approximate percentage of U.S.
24 customers located in each such state.

25 33. Between approximately March 19, 2013 and April 20, 2013 MtGox personnel
26 and CoinLab personnel had several oral and email communications in which MtGox sought to

1 determine if CoinLab was properly registered with FinCEN as a money transmitter and
 2 properly licensed as a money transmitter in those states in which MtGox customers were
 3 located. In such communications CoinLab personnel admitted that CoinLab was not
 4 registered with FinCEN as a MTB and that CoinLab had not been licensed as a MTB by any
 5 state. By the expiration of the Transition Period on March 22, 2013 CoinLab was not
 6 FinCEN registered as a money transmitter and was not licensed by any state to be a money
 7 transmitter. During these communications MtGox personnel made requests for a detailed and
 8 precise plan of how CoinLab would become compliant; in response CoinLab personnel
 9 repeatedly made vague statements, without a schedule, a deadline or a plan to finance the
 10 application process.

11 34. Notwithstanding that it was not compliant with applicable federal and state
 12 statutes and regulations, CoinLab nevertheless demanded that MtGox complete transfer of the
 13 customer accounts that were to be transferred under the Agreement. MtGox refused to do so
 14 because if CoinLab was not properly licensed or registered, CoinLab could be held in
 15 violation of federal and/or state laws, which could, among other things, prejudice customers.

16 35. Defendants are informed and believe that in April 2013 CoinLab applied for an
 17 MTB license in the State of Washington. CoinLab still has not obtained a MTB license in any
 18 other state that CoinLab would have been conducting a Bitcoin exchange business had the
 19 Agreement been fully implemented. For CoinLab to conduct the Bitcoin exchange services
 20 called for under the Agreement would be a violation of the MTB statutes of such states and a
 21 violation of 18 U.S.C. § 1960.

22 36. MtGox and Tibanne have delivered to CoinLab a notice and amended notice,
 23 each of which rescinds the Agreement; or, alternatively and without prejudice to Defendants'
 24 claims of rescission, voidness, and unenforceability, terminates the Agreement.

25 37. On May 2, 2013 CoinLab filed the Complaint in this action. In that
 26 Complaint, CoinLab alleges, among other things, that since "...November 22, 2012 the

1 Agreement has been a valid contract between CoinLab and ..." Defendants; and, that
 2 Defendants have breached the Agreement by failing to, among other things, transfer the
 3 MtGox customers that are the subject to the Agreement to CoinLab and to deposit the
 4 currency funds and Bitcoin of such customers and held in the MtGox accounts to accounts
 5 owned by CoinLab.

6 **FIRST COUNTERCLAIM**

7 **(Declaratory Judgment)**

8 38. Defendants reallege and incorporate the allegations of paragraphs 1-37 of their
 9 counterclaim above, as if set forth in full.

10 39. A genuine, actual, substantial and justiciable controversy has arisen, and now
 11 exists, between Plaintiff CoinLab and Defendants MtGox and Tibanne as to whether the
 12 Agreement is void *ab initio* and unenforceable. MtGox and Tibanne contend that CoinLab
 13 was not, and is not, registered or licensed under applicable money services business and/or
 14 MTB statutes and, therefore, the Agreement is illegal and is void *ab initio* and unenforceable.
 15 CoinLab contends that the Agreement is valid and should be enforced. As such, the parties
 16 have adverse legal interests.

17 40. The controversy between Plaintiff CoinLab and Defendants MtGox and
 18 Tibanne is ripe for decision and is of sufficient immediacy and reality to warrant the issuance
 19 of a declaratory judgment. This Court's declaratory judgment of the rights of the parties is
 20 necessary and appropriate at this time to set to rest the respective rights and obligations of the
 21 parties. Among other things, as of the date of this Counterclaim Defendants have not granted
 22 anyone else "...the right to use the Licensed Materials to provide..." the Bitcoin exchange
 23 services in the Territory and have not otherwise breached the Agreement. However, because
 24 CoinLab cannot legally provide the Bitcoin exchange services called for under the Agreement
 25 Defendants should be free, if they so choose, to find other persons who are legally able to do
 26 so without the "cloud" of the Agreement interfering with such efforts. Defendants may also

1 have a need to demonstrate to others including banks, potential finance partners or investors,
2 that the Agreement is void and of no force and effect. This Court's declaratory judgment of
3 the rights of the parties will finally determine the rights, liabilities and obligations of the
4 parties and eliminate uncertainty, insecurity and doubt as to the validity of the Agreement.

5 41. Defendants therefore request that this Court enter judgment or decree to
6 declare, adjudge and order that the Agreement is void *ab initio*, unenforceable and of no force
7 or effect, and grant such further necessary and proper relief based on such judgment or decree.

SECOND COUNTERCLAIM

(Failure of Consideration -- Rescission and Restitution)

10 42. Defendants reallege and incorporate the allegations of paragraphs 1-37 of their
11 Counterclaims above, as if set forth in full.

12 43. Defendants allege the following as a further counterclaim, and without waiving
13 that the Agreement is void *ab initio* and unenforceable as alleged above.

14 44. Under the Agreement the main consideration that CoinLab was to provide was
15 to be compliant with all statutes, code, ordinances, laws, regulations, rules, orders, and
16 decrees of all governmental authorities that would apply to the Bitcoin exchange services that
17 it was to perform under the Agreement.

18 45. CoinLab has failed to be so compliant and by such failure has materially
19 breached the Agreement and failed to provide the main consideration to which Defendants
20 were due.

21 46. Defendants have rescinded the Agreement in light of this failure of
22 consideration. In doing so Defendants have demanded of CoinLab that it return all benefits
23 that Defendants conferred on CoinLab under that Agreement, including, but not limited to, the
24 amounts of USD \$62,258.70 and CAD \$ 40.00 that were paid to CoinLab under section 4 of
25 the Agreements and the amount of 1428.81263537 Bitcoins also paid to CoinLab under
26 section 4 of the Agreement. Defendants allege that CoinLab has conferred no benefits to

1 Defendants under the Agreement and therefore Defendants have nothing to return to CoinLab;
 2 however, in their notice of rescission Defendants stated that if CoinLab contends it did confer
 3 any such benefits they should be identified and that Defendants shall return them.

4 47. Defendants are entitled to restitution of all benefits that Defendants conferred
 5 on CoinLab under that Agreement, including, but not limited to, the amounts of
 6 USD \$62,258.70 and CAD \$ 40.00 that were paid to CoinLab under section 4 of the
 7 Agreement and the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4
 8 of the Agreement.

9 48. In addition, a genuine, actual and justiciable controversy has arisen, and now
 10 exists, between Plaintiff CoinLab and Defendants MtGox and Tibanne as to the validity of the
 11 Agreement in light of such failure of consideration. Defendants contend that the Agreement
 12 has been rescinded for a failure of consideration. However, CoinLab contends that the
 13 Agreement is valid and should be enforced. As such, the parties have adverse legal interests.

14 49. The controversy between Plaintiff CoinLab and Defendants MtGox and
 15 Tibanne is ripe for decision and is of sufficient immediacy and reality to warrant the issuance
 16 of a declaratory judgment. This Court's declaratory judgment of the rights of the parties is
 17 necessary and appropriate at this time to set to rest the respective rights and obligations of the
 18 parties. Among other things, as of the date of this Counterclaim Defendants have not granted
 19 anyone else "...the right to use the Licensed Materials to provide..." the Bitcoin exchange
 20 services in the Territory and have not otherwise breached the Agreement. However, because
 21 CoinLab cannot legally provide the Bitcoin exchange services called for under the Agreement
 22 Defendants should be free, if they so choose, to find other person who are legally able to do
 23 so without the "cloud" of the Agreement interfering with such efforts. Defendants may also
 24 have a need to demonstrate to others including banks, potential finance partners or investors,
 25 that the Agreement is void and of no force and effect. This Court's declaratory judgment of
 26 the rights of the parties will finally determine the rights, liabilities and obligations of the

parties and eliminate uncertainty, insecurity and doubt as to the validity of the Agreement

50. Defendants therefore request that this Court enter a judgment granting Defendants restitution and further enter judgment or decree to declare, adjudge and order that the Agreement has been rescinded and is of no force or effect, and grant such further necessary and proper relief based on such judgment or decree.

THIRD COUNTERCLAIM

(Material Breach -- Rescission and Restitution)

51. Defendants reallege and incorporate the allegations of paragraphs 1-37 of their Counterclaims above, as if set forth in full.

52. Defendants allege the following as a further counterclaim, and without waiving that the Agreement is void *ab initio* and unenforceable as alleged above.

53. Under the Agreement CoinLab agreed that it would be compliant with all statutes, code, ordinances, laws, regulations, rules, orders, and decrees of all governmental authorities that would apply to the Bitcoin exchange services that it was to perform under the Agreement.

54. CoinLab has failed to be so compliant and by such failure has materially breached the Agreement and failed to provide the main consideration to which Defendants were due.

55. Defendants have rescinded the Agreement in light of this material breach. In doing so Defendants have demanded of CoinLab that it return all benefits that Defendants conferred on CoinLab under that Agreement, including, but not limited to, the amounts of USD \$62,258.70 and CAD \$ 40.00 that were paid to CoinLab under section 4 of the Agreement and the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4 of the Agreement. Defendants allege that CoinLab has conferred no benefits to Defendants under the Agreement and therefore Defendants have nothing to return to CoinLab; however, in their notice of rescission Defendants stated that if CoinLab contends it did confer any such

1 benefits they should be identified and that Defendants shall return them.

2 56. Defendants are entitled to restitution of all benefits that Defendants conferred
 3 on CoinLab under that Agreement, including, but not limited to, the amounts of
 4 USD \$62,258.70 and CAD \$40.00 that were paid to CoinLab under section 4 of the
 5 Agreement and the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4
 6 of the Agreement.

7 57. In addition, a genuine, actual, substantial and justiciable controversy has
 8 arisen, and now exists, between Plaintiff CoinLab and Defendants MtGox and Tibanne as to
 9 the validity of the Agreement in light of such material breach. Defendants contend that the
 10 Agreement has been rescinded for a material breach. However, CoinLab contends that the
 11 Agreement is valid and should be enforced. As such, the parties have adverse legal interests.

12 58. The controversy between Plaintiff CoinLab and Defendants MtGox and
 13 Tibanne is ripe for decision and is of sufficient immediacy and reality to warrant the issuance
 14 of a declaratory judgment. This Court's declaratory judgment of the rights of the parties is
 15 necessary and appropriate at this time to set to rest the respective rights and obligations of the
 16 parties. . Among other things, as of the date of this Counterclaim Defendants have not
 17 granted anyone else "...the right to use the Licensed Materials to provide..." the Bitcoin
 18 exchange services in the Territory and have not otherwise breached the Agreement. However,
 19 because CoinLab cannot legally provide the Bitcoin exchange services called for under the
 20 Agreement Defendants should be free, if they so choose, to find other person who are legally
 21 able to do so without the "cloud" of the Agreement interfering with such efforts. Defendants
 22 may also have a need to demonstrate to others including banks, potential finance partners or
 23 investors, that the Agreement is void and of no force and effect. This Court's declaratory
 24 judgment of the rights of the parties will finally determine the rights, liabilities and
 25 obligations of the parties and eliminate uncertainty, insecurity and doubt as to the validity of
 26 the Agreement.

59. Defendants therefore request that this Court enter a judgment granting Defendants restitution and further enter judgment or decree to declare, adjudge and order that the Agreement has been rescinded and is of no force or effect, and grant such further necessary and proper relief based on such judgment or decree.

FOURTH COUNTERCLAIM

(Misrepresentation - Rescission and Restitution)

60. Defendants reallege and incorporate the allegations of paragraphs 1-37 of their Counterclaims above, as if set forth in full.

61. Defendants allege the following as a further counterclaim, and without waiving that the Agreement is void *ab initio* and unenforceable as alleged above.

62. In the negotiations which took place in approximately May to September 2012 and which led up to the Agreement Vessenes represented that CoinLab was compliant with all laws and regulations relevant to conducting the Bitcoin exchange business that was the subject of the parties' negotiations; and, that CoinLab was registered as a "prepaid access" provider and such was sufficient. In the Agreement itself CoinLab represented, promised and warranted that it would be compliant with all statutes, code, ordinances, laws, regulations, rules, orders, and decrees of all governmental authorities that would apply to the Bitcoin exchange services that it was to perform under the Agreement. The Agreement was signed by Vessenes on or about November 22, 2012.

63. Such representations, promises and warranties were material to Defendants and they relied upon them when entering into the Agreement.

64. Such representations, promises and warranties and when it made such representations, promises and warranties CoinLab did not intend to perform them. Among other things, CoinLab had no intent to become licensed in all the states in which customers using the Bitcoin exchange services that CoinLab was to provide were located.

65. Defendants have rescinded the Agreement in light of this misrepresentation.

1 In doing so Defendants have demanded of CoinLab that it return all benefits that Defendants
 2 conferred on CoinLab under that Agreement, including, but not limited to, the amounts of
 3 USD \$62,258.70 and CAD \$40.00 that were paid to CoinLab under section 4 of the
 4 Agreement and the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4
 5 of the Agreement. Defendants allege that CoinLab has conferred no benefits to Defendants
 6 under the Agreement and therefore Defendants have nothing to return to CoinLab; however,
 7 in their notice of rescission Defendants stated that if CoinLab contends it did confer any such
 8 benefits they should be identified and that Defendants shall return them.

9 66. Defendants are entitled to restitution of all benefits that Defendants conferred
 10 on CoinLab under that Agreement, including, but not limited to, the amounts of USD
 11 \$62,258.70 and CAD \$40.00 that were paid to CoinLab under section 4 of the Agreement and
 12 the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4 of the
 13 Agreement.

14 67. In addition, a genuine, actual, substantial and justiciable controversy has
 15 arisen, and now exists, between Plaintiff CoinLab and Defendants MtGox and Tibanne as to
 16 the validity of the Agreement in light of such misrepresentation. Defendants contend that the
 17 Agreement has been rescinded for a misrepresentation and is therefore void *ab initio* and
 18 unenforceable. However, CoinLab contends that the Agreement is valid and should be
 19 enforced. As such, the parties have adverse legal interests.

20 68. The controversy between Plaintiff CoinLab and Defendants MtGox and
 21 Tibanne is ripe for decision and is of sufficient immediacy and reality to warrant the issuance
 22 of a declaratory judgment. This Court's declaratory judgment of the rights of the parties is
 23 necessary and appropriate at this time to set to rest the respective rights and obligations of the
 24 parties. . Among other things, as of the date of this Counterclaim Defendants have not
 25 granted anyone else "...the right to use the Licensed Materials to provide..." the Bitcoin
 26 exchange services in the Territory and have not otherwise breached the Agreement. However,

1 because CoinLab cannot legally provide the Bitcoin exchange services called for under the
2 Agreement Defendants should be free, if they so choose, to find other person who are legally
3 able to do so without the "cloud" of the Agreement interfering with such efforts. Defendants
4 may also have a need to demonstrate to others including banks, potential finance partners or
5 investors, that the Agreement is void and of no force and effect and eliminate uncertainty,
6 insecurity and doubt as to the validity of the Agreement.

7 69. Defendants therefore request that this Court enter a judgment granting
8 Defendants restitution and further enter judgment or decree to declare, adjudge and order that
9 the Agreement has been rescinded and is of no force or effect, and grant such further
10 necessary and proper relief based on such judgment or decree.

FIFTH COUNTERCLAIM

(Declaratory Judgment - Liquidated Damages Clause is Void and Unenforceable)

13 70. Defendants reallege and incorporate the allegations of paragraphs 1-37 of their
14 Counterclaims above, as if set forth in full.

15 71. Defendants allege the following as a further and alternative counterclaim, and
16 without waiving that the Agreement is void *ab initio* and unenforceable as alleged above.

17 72. A genuine, actual, substantial and justiciable controversy has arisen, and now
18 exists, between Plaintiff CoinLab and Defendants MtGox and Tibanne as to whether the
19 liquidated damages clause of Section 1.K., of the Agreement is void and/or enforceable.
20 MtGox and Tibanne contend that the liquidated damages clause of Section 1.K., is void and/or
21 unenforceable because it is not compensatory, it is intended to be a punishment for a failure to
22 perform, CoinLab has suffered no losses, and it is not a reasonable or supportable estimate or
23 forecast of any losses that CoinLab would suffer should the provisions of Section 1.F.1 of the
24 Agreement be breached (which they have not been). CoinLab contends that the liquidated
25 damages clause is valid and should be enforced. As such, the parties have adverse legal
26 interests.

73. The controversy between Plaintiff CoinLab and Defendants MtGox and Tibanne is ripe for decision and is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. This Court's declaratory judgment of the rights of the parties is necessary and appropriate at this time to set to rest the respective rights and obligations of the parties. CoinLab contends that Defendants breached section 1.F.1 of the Agreement and it is therefore entitled to the liquidated damages referred to in section 1.K. Defendants contend that the Court should declare that the entire Agreement is void and unenforceable; however, if the Court does not do so, and if CoinLab is entitled to enforce the Agreement, CoinLab should not be able to enforce the provisions of section 1.K. Such provisions provide an unreasonable and unjust advantage to CoinLab and encourage it to not perform since MtGox could not find an alternate partner at the risk of CoinLab invoking such provisions, as it is doing in this action. This Court's declaratory judgment of the rights of the parties will finally determine the rights, liabilities and obligations of the parties and eliminate uncertainty, insecurity and doubt as to the validity of the Agreement.

74. Defendants therefore request that this Court enter judgment or decree to declare, adjudge and order that section 1.K., of the Agreement is void, unenforceable and is of no force or effect, and grant such further necessary and proper relief based on such judgment or decree.

SIXTH COUNTERCLAIM

(Declaratory Judgment)

75. Defendants reallege and incorporate the allegations of paragraphs 1-37 of their counterclaims above, as if set forth in full.

76. Defendants allege the following as a further and alternative counterclaim, and without waiving that the Agreement is void *ab initio* and unenforceable as alleged above.

77. A genuine, actual, substantial and justiciable controversy has arisen, and now exists, between Plaintiff CoinLab and Defendants MtGox and Tibanne as to whether the

1 Agreement is terminated. MtGox and Tibanne contend that CoinLab was not, and is not,
2 registered or licensed under applicable money services business and/or MTB statutes, that
3 such constitutes a material breach justifying termination, and that the Agreement has been
4 terminated. CoinLab contends that the Agreement is valid and should be enforced. As such,
5 the parties have adverse legal interests.

6 78. The controversy between Plaintiff CoinLab and Defendants MtGox and
7 Tibanne is ripe for decision and is of sufficient immediacy and reality to warrant the issuance
8 of a declaratory judgment. This Court's declaratory judgment of the rights of the parties is
9 necessary and appropriate at this time to set to rest the respective rights and obligations of the
10 parties. Among other things, as of the date of this Counterclaim Defendants have not granted
11 anyone else "...the right to use the Licensed Materials to provide..." the Bitcoin exchange
12 services in the Territory and have not otherwise breached the Agreement. However, because
13 CoinLab cannot legally provide the Bitcoin exchange services called for under the Agreement
14 Defendants should be free, if they so choose, to find other person who are legally able to do
15 so without the "cloud" of the Agreement interfering with such efforts. Defendants may also
16 have a need to demonstrate to others including banks, potential finance partners or investors,
17 that the Agreement is void and of no force and effect. This Court's declaratory judgment of
18 the rights of the parties will finally determine the rights, liabilities and obligations of the
19 parties and eliminate uncertainty, insecurity and doubt as to the validity of the Agreement.

20 79. Defendants therefore request that this Court enter judgment or decree to
21 declare, adjudge and order that the Agreement has been terminated and is of no force or
22 effect, and grant such further necessary and proper relief based on such judgment or decree.

SEVENTH COUNTERCLAIM

(Constructive Trust)

25 80. Defendants reallege and incorporate the allegations of paragraphs 4-14 and 30
26 of their counterclaims above, as if set forth in full.

1 81. Defendants allege the following as a tort counterclaim for the tortious and
 2 unjust conduct of CoinLab, and without waiving that the Agreement is void, unenforceable
 3 and rescinded as alleged above.

4 82. On information and belief, during the period of approximately February,
 5 March and/or April, 2013 CoinLab requested or suggested to certain MtGox customers that
 6 they deposit funds into one or more bank accounts owned or controlled by CoinLab.

7 83. On information and belief, in or about March and April 2013, CoinLab
 8 received funds from several, if not all, of such customers, and Defendants are informed and
 9 believe that the amount of such funds was \$12,788,701.08. Such funds were credited to their
 10 MtGox account and the actual funds themselves were to be transferred and deposited into the
 11 MtGox bank account. MtGox has a superior right to such funds over CoinLab.

12 84. On information and belief, CoinLab caused the deposited funds to be reflected
 13 and credited to the customers' MtGox accounts; however, CoinLab never transferred the
 14 actual funds money to MtGox's bank account.

15 85. In April, 2013, MtGox discovered a discrepancy between the currency funds
 16 reflected in such customers' account holdings and the money that had been actually received
 17 from such customers, and such discrepancy was in the amount of approximately
 18 \$12,788,701.08.

19 86. In April 2013, MtGox requested that CoinLab transfer the funds deposited by
 20 such customers to the MtGox bank account.

21 87. In April 2013, CoinLab transferred approximately \$7,473,490.29 of the
 22 \$12,788,701.08 amount leaving a balance to be transferred to the MtGox bank account by
 23 CoinLab of \$ 5,315,210.79.

24 88. MtGox has again requested CoinLab to transfer the \$ 5,315,210.79 amounts.

25 89. Despite having a duty to return the money had and received by CoinLab to
 26 MtGox, CoinLab has not turned over the remaining \$ 5,315,210.79 amount.

90. CoinLab is under a duty to transfer such funds to the MtGox bank account on the grounds that CoinLab would be unjustly enriched if CoinLab were permitted to retain the customer funds that lawfully belong to MtGox.

91. CoinLab has not transferred the customer funds to the MtGox bank account and, in good conscience, CoinLab cannot retain the beneficial interest in MtGox's customer funds.

92. As such, CoinLab does not own the customer funds, but instead CoinLab holds such funds in constructive trust. Such constructive trust is for the benefit of the MtGox customers and/or MtGox as the Court determines to be proper; For these reasons the Court should impose a constructive trust over such amounts.

EIGHTH COUNTERCLAIM

(Accounting)

93. Defendants reallege and incorporate the allegations of paragraphs 4-14, 30 and 80-92 of their counterclaim above, as if set forth in full.

94. Defendants allege the following as a tort counterclaim for the tortious and unjust conduct of CoinLab, and without waiving that the Agreement is void, unenforceable and rescinded as alleged above.

95. MtGox has been damaged as a result of CoinLab's wrongful conversion of the MtGox customer funds as alleged above. The MtGox accounts of the customers whose funds were deposited with CoinLab were credited with such amounts yet the funds themselves were not transferred to the MtGox account. Through the purchase and sale of Bitcoins, or through withdrawals, such customers may therefore have acquired more funds than to which they are entitled, all to the damage of MtGox.

96. MtGox demanded a full accounting from CoinLab of the funds collected from MtGox's customers, including the location of such funds, any disposition of such funds and the accounting and handling of the proceeds of any such disposition; however, CoinLab has

refused to render it to date.

97. An accounting is necessary because without one MtGox cannot ascertain sufficient information as to whether CoinLab still has the customer funds, whether they have been disposed of, and the nature, extent and location of the proceeds of such disposition. Such information is unknown to MtGox and cannot be ascertained without a detailed accounting by CoinLab.

NINTH COUNTERCLAIM

(Conversion -- Damages)

98. Defendants reallege and incorporate the allegations of paragraphs 4-14, 30 and 80- 97 of their counterclaim above, as if set forth in full.

99. Defendants allege the following as a tort counterclaim to recover for the tortious and unjust conduct of CoinLab, and without waiving that the Agreement is void, unenforceable and rescinded as alleged above.

100. CoinLab's failure to transfer the MtGox customer funds, and CoinLab's retention of them, constitute conversion of the MtGox's customer funds as their own.

101. As a result, MtGox has been damaged. Among other things, the MtGox accounts of the customers whose funds were deposited with CoinLab were credited with such amounts yet the funds themselves were not transferred to the MtGox account. Through the purchase and sale of Bitcoins, and/or through withdrawals, such customers may therefore have obtained from MtGox more funds than to which they are entitled, all to the damage of MtGox in an amount to be proven at trial

TENTH COUNTERCLAIM

(Tort -- Misrepresentation - Damages)

102. Defendants reallege and incorporate the allegations of paragraphs 4-14, 30, 80-101 of their Counterclaims above, as if set forth in full.

103. Defendants allege the following as a tort counterclaim for misrepresentation to

1 recover for the tortious and unjust conduct of CoinLab and without waiving that the
 2 Agreement is void, unenforceable and rescinded as alleged above.

3 104. In the negotiations which took place in approximately May to September 2012
 4 and which led up to the Agreement Vessenes represented that CoinLab was compliant with all
 5 laws and regulations relevant to re; and, that CoinLab was registered as a “prepaid access”
 6 provider and such was sufficient. In the Agreement itself CoinLab represented, promised and
 7 warranted that it would be compliant with all statutes, code, ordinances, laws, regulations,
 8 rules, orders, and decrees of all governmental authorities that would apply to the Bitcoin
 9 exchange services that it was to perform under the Agreement. The Agreement was signed by
 10 Vessenes on or about November 22, 2012.

11 105. In making such representations, promises and warranties CoinLab was stating
 12 its intent to be so compliant.

13 106. Such representations, promises and warranties were material to Defendants.
 14 Among other things, CoinLab's compliance with all such laws and regulations was the reason
 15 that Defendants were interested and willing to enter into the Agreement and to grant CoinLab
 16 access to the MtGox system, including access that would allow CoinLab to make credit
 17 entries on the accounts of MtGox account holders.

18 107. Such representations, promises and warranties were false, when it made such
 19 representations, promises and warranties CoinLab did not intend to perform them, and
 20 CoinLab knew as much when it made them. Among other things, CoinLab had no intent to
 21 become licensed in all the states in which customers using the Bitcoin exchange services that
 22 CoinLab was to provide were located. At the time such representations, promises and
 23 warranties were made Defendants did not know they were false and that CoinLab had no
 24 intent to perform them.

25 108. CoinLab intended for Defendants to rely on such representations, promises and
 26 warranties. Defendants had a right to rely on them and did rely on them. Because of such

1 reliance MtGox, among other things, granted CoinLab access to the MtGox system, including
2 access that would allow CoinLab to make credit entries on the accounts of MtGox account
3 holders.

4 109. As a result, MtGox has been damaged. Among other things, the MtGox
5 accounts of the customers whose funds were deposited with CoinLab were credited by
6 CoinLab with such amounts yet the funds themselves were not transferred to the MtGox
7 account. Through the purchase and sale of Bitcoins, and/or through withdrawals, such
8 customers may therefore have obtained from MtGox more funds than to which they are
9 entitled, all to the damage of MtGox in an amount to be proven at trial.

ELEVENTH COUNTERCLAIM

(Tort -- Innocent Misrepresentation - Damages)

12 110. Defendants reallege and incorporate the allegations of paragraphs 4-14, 30, 80-
13 101 of their Counterclaims above, as if set forth in full.

14 111. Defendants allege the following as a tort counterclaim for innocent
15 misrepresentation to recover for the tortious and unjust conduct of CoinLab and without
16 waiving that the Agreement is void, unenforceable and rescinded as alleged above.

17 112. In the negotiations which took place in approximately May to September 2012
18 and which led up to the Agreement Vessenes represented that CoinLab was compliant with all
19 laws and regulations relevant to re; and, that CoinLab was registered as a “prepaid access”
20 provider and such was sufficient. In the Agreement itself CoinLab represented, promised and
21 warranted that it would be compliant with all statutes, code, ordinances, laws, regulations,
22 rules, orders, and decrees of all governmental authorities that would apply to the Bitcoin
23 exchange services that it was to perform under the Agreement. The Agreement was signed by
24 Vessenes on or about November 22, 2012.

25 113. In making such representations, promises and warranties CoinLab was stating
26 its intent to be so compliant.

114. Such representations, promises and warranties were material to Defendants. Among other things, CoinLab's compliance with all such laws and regulations was the reason that Defendants were interested and willing to enter into the Agreement and to grant CoinLab access to the MtGox system, including access that would allow CoinLab to make credit entries on the accounts of MtGox account holders.

115. Defendants had a right to rely on them and did justifiably rely on them. Because of such reliance MtGox, among other things, granted CoinLab access to the MtGox system, including access that would allow CoinLab to make credit entries on the accounts of MtGox account holders.

116. As a result, MtGox has been damaged. Among other things, the MtGox accounts of the customers whose funds were deposited with CoinLab were credited by CoinLab with such amounts yet the funds themselves were not transferred to the MtGox account. Through the purchase and sale of Bitcoins, and/or through withdrawals, such customers may therefore have obtained from MtGox more funds than to which they are entitled, all to the damage of MtGox in an amount to be proven at trial.

TWELFTH COUNTERCLAIM

(Tort --Negligent Misrepresentation - Damages)

117. Defendants reallege and incorporate the allegations of paragraphs 4-14, 30, 80-101 of their Counterclaims above, as if set forth in full.

118. Defendants allege the following as a tort counterclaim for negligent misrepresentation to recover for the tortious and unjust conduct of CoinLab and without waiving that the Agreement is void, unenforceable and rescinded as alleged above.

119. CoinLab supplied information to Defendants for their guidance which was false. In the negotiations which took place in approximately May to September 2012 and which led up to the Agreement Vessenes represented that CoinLab was compliant with all laws and regulations relevant to conducting the Bitcoin exchange business that was the

1 subject of the parties' negotiations; and, that CoinLab was registered as a "prepaid access"
 2 provider and such was sufficient. In the Agreement itself CoinLab represented, promised and
 3 warranted that it would be compliant with all statutes, code, ordinances, laws, regulations,
 4 rules, orders, and decrees of all governmental authorities that would apply to the Bitcoin
 5 exchange services that it was to perform under the Agreement. The Agreement was signed by
 6 Vessenes on or about November 22, 2012.

7 120. In making such representations, promises and warranties CoinLab was stating
 8 its intent to be so compliant.

9 121. Such representations, promises and warranties were material to Defendants.
 10 Among other things, CoinLab's compliance with all such laws and regulations was the reason
 11 that Defendants were interested and willing to enter into the Agreement and to grant CoinLab
 12 access to the MtGox system, including access that would allow CoinLab to make credit
 13 entries on the accounts of MtGox account holders.

14 122. Such representations, promises and warranties were false and when it made
 15 such representations, promises and warranties CoinLab did not intend to have or obtain a
 16 MTB license in each state where it would be conducting the Bitcoin exchange business that
 17 was the subject of the parties' negotiations. CoinLab knew, or through the exercise of
 18 reasonable diligence should have known, that it was required to be registered and licensed in
 19 every state it was to conduct the Bitcoin exchange business and CoinLab was, at a minimum,
 20 negligent in not obtaining such information. At the time such representations, promises and
 21 warranties were made Defendants did not know they were false and that CoinLab had no
 22 intent to perform them.

23 123. CoinLab knew or should have known that the information it was supplying
 24 Defendants was to be used by Defendants to guide their decisions and CoinLab intended for
 25 Defendants to rely on such representations, promises and warranties. Defendants had a right
 26 to rely on them, did rely on them and such reliance was reasonable and justified. Because of

such reliance MtGox, among other things, granted CoinLab access to the MtGox system, including access that would allow CoinLab to make credit entries on the accounts of MtGox account holders.

124. As a result, MtGox has been damaged. Among other things, the MtGox accounts of the customers whose funds were deposited with CoinLab were credited by CoinLab with such amounts yet the funds themselves were not transferred to the MtGox account. Through the purchase and sale of Bitcoins, and/or through withdrawals, such customers may therefore have obtained from MtGox more funds than to which they are entitled, all to the damage of MtGox in an amount to be proven at trial.

REQUEST FOR RELIEF

Defendants having answered Plaintiff's complaint and having alleged affirmative defenses and counterclaims request that the Court grant the following relief:

1. That Plaintiff's complaint be dismissed with prejudice;
2. On the First Counterclaim, a judgment or decree to declare, adjudge and order that the Agreement is void *ab initio*, unenforceable and of no force or effect, and grant such further necessary and proper relief based on such judgment or decree;
3. On the Second, Third and Fourth Counterclaims:
 - a. a declaratory judgment or decree to declare, adjudge and order that the Agreement has been rescinded and is of no force or effect, and grant such further necessary and proper relief based on such judgment or decree; and,
 - b. that CoinLab be ordered to pay restitution to Defendants of all benefits conferred on CoinLab, including the amounts of USD \$62,258.70 and CAD \$40.00 that were paid to CoinLab under section 4 of the Agreement and the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4 of the Agreement and the amount of 1428.81263537 Bitcoins also paid to CoinLab under section 4 of the Agreement.

1 4. On the Fifth Counterclaim, a declaratory judgment or decree to declare,
2 adjudge and order that section 1.K., of the Agreement is void, unenforceable and is of no
3 force or effect, and grant such further necessary and proper relief based on such judgment or
4 decree;

5 5. On the Sixth Counterclaim a declaratory judgment or decree to declare,
6 adjudge and order that the Agreement has been terminated and is of no force or effect, and
7 grant such further necessary and proper relief based on such judgment or decree;

8 6. On the Seventh Counterclaim, a judgment or decree imposing a constructive
9 trust over the MtGox customer funds being held by CoinLab in the amount of \$5,315,210.79
10 for the benefit of the MtGox customers and/or MtGox as the Court determines to be proper,
11 and such further and related relief that the Court determines to be just and proper as to such
12 funds;

13 7. On the Eighth Counterclaim, a judgment or decree ordering an accounting of
14 the MtGox customer funds being held by CoinLab in the amount of \$ 5,315,210.79;

15 8. On the Ninth Counterclaim a judgment for damages in favor of Defendants and
16 against CoinLab in an amount to be proven, plus interest;

17 9. On the Tenth Counterclaim a judgment for damages in favor of Defendants
18 and against CoinLab in an amount to be proven, plus interest;

19 10. On the Eleventh Counterclaim a judgment for damages in favor of Defendants
20 and against CoinLab in an amount to be proven, plus interest; and

21 11. On the Twelfth Counterclaim a judgment for damages in favor of Defendants
22 and against CoinLab in an amount to be proven, plus interest.

23 12. That Defendants be awarded their costs of suit incurred in defense of this
24 action.

25 13. That Defendants be awarded their reasonable attorneys' fees as recoverable at
26 law or equity.

14. For such other and further relief as the Court deems just and proper.

DATED this 10th day of September, 2013.

BAKER & MCKENZIE LLP

(Admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lindsey N Godfrey - lngodfrey@susmangodfrey.com, ahightower@susmangodfrey.com

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DATED this 10th day of September, 2013 at Seattle, Washington.

By s/ Louis D. Peterson
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